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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MAGALY EAGAN and CAROL A.  
SPINNER, individually and on behalf of  
all other similarly situated,

Plaintiffs

v.

AXA EQUITABLE LIFE INSURANCE  
COMPANY and Does 1-10,

Defendant.

CASE NO. CV 06-7637 DSF (JTLx)

**CLASS ACTION**

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
OF PLAINTIFFS' MOTION FOR  
FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: June 6, 2011  
Time: 1:30 p.m.  
Dept: 840  
Judge: The Honorable Dale S. Fischer

**I. INTRODUCTION**

Plaintiffs Magaly Eagan, Carol Spinner and Evans Walker (collectively, “Plaintiffs”) submit this supplemental Memorandum of Points and Authorities in Support of Plaintiffs’ Motion For Final Approval of Class Action Settlement to report to the Court that the parties have fully complied with this Court’s December 3, 2010 Order Granting the Motion for Preliminary Approval (Dkt. 147), directing the notice of settlement to the Class. Of the more than 10,625 affected class members to whom notice was mailed, only 21 excluded themselves and only three (3) objected. (*See* Declaration of James C. Sturdevant Regarding Timely Requests for Exclusion and Objections (“Sturdevant Decl.”), filed on April 8, 2011 [Dkt. 156], at ¶¶ 3-18; *see also* *Ex Parte* Application to Reschedule Dates and Opt Outs, Objections and Fairness Hearing (“*Ex Parte* App.”) filed on April 8, 2011 [Dkt. 155], at 1:18-2:23; Plaintiffs’ Opposition to *Ex Parte* Application (“*Ex. Parte* Opp.”), filed this date [Dkt. 158], at 5:1-6.)

Approximately ten percent of the settlement class did not receive mailed notice of the settlement. Defendant moved to again postpone the fairness hearing. (*See Ex Parte* App. at 4:1-9.) Plaintiffs opposed this relief, instead arguing that the fairness hearing should go forward and the mailed notice to 991 settlement class members should also occur. (*See Ex Parte* Opp. at 4:11-6:8.) Plaintiffs argued that the settlement should be approved provisionally, subject to the Court’s consideration of any objections which may differ and may be filed from any of the 991 absent class members who will be mailed further notice. (*Id.*) The Court granted Defendant’s motion and rescheduled the fairness hearing for June 6, 2011.

**II. ARGUMENT**

**A. Affected Class Members Have Been Provided Adequate Notice Of The Settlement**

After the hearing November 29, 2010, this Court granted preliminary approval of the settlement, approved the proposed notice, and authorized dissemination of the notice to the class. (Dkt. 147.) In accordance with Section VI of the Court’s order and

1 paragraphs 26, 27, and 47 of the Stipulation of Settlement (Dkt. 142-3), the approved  
2 notice was mailed to Class Members by the Settlement Administrator, Aon Hewitt, in  
3 conjunction with its onsite manual assembly vendor, Cliff Bregstone Incorporated  
4 (“CBI”) on or before December 17, 2010. (Joint Stipulation re Class Notice (“Joint  
5 Stip.”), filed herein on February 4, 2011 [Dkt. 153], at 1:2-2:17; *see also Ex Parte App.*  
6 1:18-28.) The Settlement Administrator was provided with Class Members’ names, last  
7 known addresses, and other contact information from Defendant AXA. (*Id.*) This  
8 information was used to mail the more than 10,625 notice packets to the best possible  
9 address known to AXA for Class Members. (*Id.*)

10 In or about mid-January, 2011, the parties had reason to believe that class notice  
11 may not have been received by all class members. (Joint Stip. at 2:18-3:17; *Ex Parte*  
12 *App.* at 2:3-16; *Ex. Parte Opp.* at 2:6-3:4.) The parties agreed that the class administrator  
13 should conduct further inquiry, which led to a determination that a substantial portion of  
14 the 10,625 class members may not have received class notice and that a second notice  
15 was necessary. (*Id.*) Accordingly, the parties submitted a Joint Stipulation re Class  
16 Notice and Case Calendar (Dkt. 153) requesting postponement of previously-set  
17 deadlines relating to the settlement approval and approval for the mailing of the Second  
18 Notice of Class Action Settlement to be mailed to class members (*id.*). The request was  
19 approved on February 8, 2011 (Dkt. 154) and in accordance with that order, the second  
20 Class Notice was mailed by the Settlement Administrator on or before February 15, 2011  
21 (*Ex Parte App.* at 2:13-16).

22 AXA reported that approximately 1,000 packets were returned by the United States  
23 Postal Service as undeliverable. (*Ex Parte App.* at 2:17-23.) AXA used Lexis Nexis to  
24 update addresses for approximately 991 class members using their social security  
25 numbers and other available information in preparation for a second re-mailing of the  
26 packets to these class members to allow them the further opportunity to opt-out. (*See Ex*  
27 *Parte App.* at 3:3-16) In its *Ex Parte* Application, AXA represented that it had obtained  
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1 updated address information for 576 of the approximately 1,000 class members from  
2 whom the second mailed notice had been returned as undeliverable by the U.S. Postal  
3 Service. (*Id.*) In addition, the Lexis/Nexis database reported that 415 of the previously-  
4 used addresses were accurate and up-to-date. (*Id.*) The remaining undeliverable 52  
5 addresses did not appear in the Lexis/Nexis database. (*See Ex Parte* App. at 3 n.2.)

6 Based upon responses to the three mailed notices to date, only 22 of the more than  
7 9,000 class members have requested exclusion and only three (3) have objected. Only  
8 one more class member of the several hundred for whom new addresses had been  
9 obtained for the third mailing requested exclusion and no one objected. (*See*  
10 Supplemental Declaration of James C. Sturdevant In Support of Motion for Final  
11 Approval of Class Action Settlement (“Supp. Sturdevant Decl.”) filed herewith, at ¶ 3.)  
12 Additionally, one letter was received from a class member neither objecting nor opting  
13 out, but simply requesting beneficiary election (Supp. Sturdevant Decl. at ¶ 4). (*See Ex.*  
14 *Parte Opp.* at 4:11-6:8.)

15 These measures have ensured that more than 98% of all Class Members have  
16 received notice directly and that a very significant percentage of the Class will receive  
17 monetary benefits from the settlement. Accordingly, all affected Class Members have  
18 been mailed notice of the settlement and provided the meaningful opportunity to object or  
19 opt-out of the settlement.

20 **B. Only Three Class Members Have Objected To The Settlement**

21 The parties fully complied with the Court’s Order requiring it to provide adequate  
22 notice of the proposed settlement of the class action. (*See* Section II.A., *supra.*) Aon  
23 Hewitt, in conjunction with its onsite manual assembly vendor, CBI, was employed by  
24 Defendant AXA to carry out the task. (*Id.*) As this Court’s preliminary approval order  
25 recognized, the class notice adequately described this action and the proposed settlement,  
26 identified the specific benefits that would be provided to the Class pursuant to the  
27 settlement, identified the amount of attorneys’ fees and costs that would be paid to  
28

1 Plaintiffs' counsel under the settlement, and provided detailed information on how a  
2 Class Member may object to the settlement or be excluded from the settlement. (Dkt.  
3 147.) Additionally, on January 10, 2011 Plaintiffs filed their Motion for Final Approval  
4 of Award of Attorney's Fees which gave Class Members adequate opportunity to review  
5 and object to the requested fee award. (Dkt. 152.)

6 After providing significant notice of the parties settlement and giving the Class  
7 sufficient opportunity to review the Court's file and all of the terms of the Settlement  
8 Agreement, only three (3) of the more than 10,625 affected class members objected to the  
9 fairness of the settlement. (Sturdevant Decl. [Dkt. 156] ¶¶ 4-8.) In addition, only 22  
10 individuals, out of more than 10,625 excluded themselves from the settlement. (*Id.* ¶ 3.)  
11 Settlement is especially appropriate in cases, like this one, where there have been few  
12 objections and requests for exclusion filed. *See, e.g., Churchill Village LLC v. Gen.*  
13 *Elec.*, 361 F.3d 566, 577, 580 (9th Cir. 2004) (affirming settlement with 45 objections  
14 and 500 opt-outs out of 90,000 notices sent); *Nat'l Rural Telecomms. Coop. v. DIRECTV,*  
15 *Inc.*, 221 F.R.D. 523, 528-29 (C.D. Cal. 2004) ("It is established that the absence of a  
16 large number of objections to a proposed class action settlement raises a strong  
17 presumption that the terms of a proposed class settlement action are favorable to the class  
18 members"); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006) (stating that  
19 when "percentage of objectors is small" this factor weighs towards finding a settlement  
20 fair); *American Employers' Ins. Co. v. King Resources Co.*, 556 F.2d 471, 478 (10th Cir.  
21 1977) (stating that the presence of only a single objector was "of striking significance and  
22 import").

23 Plaintiffs have responded in full to each of the objections. (*See* Sturdevant Decl.  
24 ¶¶ 4-18.) None has merit for the reasons stated

25 **C. The Terms Of The Settlement Agreement Provide Meaningful Relief To**  
26 **The Class**

27 The Settlement Agreement provides two primary benefits for the class. The first is  
28 a monetary component that requires that AXA establish a \$2,500,000 settlement fund

1 from which it will pay the approximately 10,625 class members varying amounts based  
2 upon their individual circumstances. (Stipulation of Settlement [Dkt. 142-3] ¶ 16.) The  
3 primary factor in determining the amount of the payment to each class member is the  
4 increased amount that each class member allegedly paid for health care coverage during  
5 the relevant time period as a result AXA's implementation of the cap on its contributions  
6 to the cost of coverage. Under the allocation formula in the Settlement Agreement, each  
7 class member will receive a minimum payment of \$50. Beyond that, each Class Member  
8 who was adversely affected by the implementation of the Company Contribution Limit  
9 that took effect on January 1, 2004 will receive an additional sum. The amount of that  
10 additional sum will be proportional to the additional cost that each Class Member paid as  
11 a result of the AXA contribution limit from the balance in the Settlement Fund after the  
12 \$50 payments are taken into account. Those amounts will be calculated individually  
13 based upon a comparative analysis of the cost to class members for medical and dental  
14 coverage during the relevant time period with and without the company contribution limit  
15 or cap in effect.

16 This payment will be provided to Class Members who continue to participate in the  
17 AXA retiree health care plan in the form of credits toward the cost coverage. (Stipulation  
18 of Settlement [Dkt. 142-3] ¶ 16.) Class Members who no longer participate in the retiree  
19 health care plan will receive their settlement benefits in the form of cash, by a check  
20 mailed to their last known address. (*Id.*)

21 The second component of the settlement is in the nature of injunctive relief. AXA  
22 will forego the ability, otherwise available to it under ERISA, to eliminate health care  
23 benefits for class members for a period of two years and will be required to continue to  
24 subsidize the cost of such benefits at a specified level. (Stipulation of Settlement [Dkt.  
25 142-3] ¶¶ 17-18.) AXA has agreed to continue to offer retiree health care coverage to  
26 retirees and eligible dependents for calendar years 2011 and 2012. During the 2011  
27 calendar year, AXA will not reduce its current maximum contribution limit of \$6702 per  
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1 retiree for non-Medicare-eligible Class Members and \$3,269 per retiree for Medical-  
2 eligible Class Members. (*Id.*) For the 2012 calendar year, AXA is required to continue  
3 to offer coverage but may, at its option, reduce its maximum contribution limit by up to,  
4 but no more than, 25% of its current level. In this way, Class Members are provided the  
5 security that their health care benefits will remain in place with a predictable level of  
6 reduced contribution, if any, on the part of Defendant. (*Id.*)

7 The Settlement Agreement also includes a provision permitting AXA to protect  
8 itself from being locked into providing continued benefits beyond 2012. (Stipulation of  
9 Settlement [Dkt. 142-3] ¶¶ 19-20.) Specifically, the parties negotiated a provision  
10 allowing AXA to “opt out” of its commitment to provide the specified level of benefits  
11 through 2012 in the event that either house of Congress, during that time, passes a bill  
12 which would limit AXA’s future right to reduce or eliminate retiree health care benefits.  
13 No such bill has yet been passed. In that event, however, the Settlement Agreement  
14 requires that AXA pay additional sums to Class Members in the aggregate amount of up  
15 to \$4.5 million. (*Id.*)

### 16 **III. CONCLUSION**

17 Accordingly, without significant exclusions by Class Members affected by the  
18 preliminarily approved settlement, and with only three objections, the Settlement  
19 Agreement should be given final approval with the Court retaining jurisdiction to enforce  
20 the provisions of the settlement.

21 DATED: May 25, 2011

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26 By: /s/ James C. Sturdevant

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